IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/09/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.21432 OF 2003
AND
CRL.M.P.No.6141 OF 2003

1. V.V.Karthikeyan
2. T.Rajkumar ... Petitioners

-Vs-

The Food Inspector,
City Municipal Corporation,
Coimbatore. ... Respondent

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioner : Mr.S.Shanmughvelayutham

For respondent : Mr.A.N.Thambidurai,
Government Advocate,
Criminal Side

:O R D E R

The above criminal original petition has been filed under Section 482 Cr.P.C. praying to call for the records relating to C.C.No.794 of 2002 on the file of the Court of Judicial Magistrate No.VI, Coimbatore and quash the same.

2. Heard learned counsel for the petitioner and the learned Government Advocate on the criminal side as well.
3. In the affidavit filed in support of the above criminal original petition, the petitioners would submit that the respondent has filed a complaint against them for the offences punishable under Sections 7(i)(ii) & 16(1)(a)(i) read with Section 2(ia)(a)((m) & 2(ix)(k) & Rule 32 (i) of the Prevention of Food Adulteration Act 1954 and Rules 1955 on the file of the Court of Judicial Magistrate No.VI, Coimbatore and the learned Magistrate issued summons to the petitioners/ accused on 1.12.2002; that even though the analyst report was received by the complainant on 14.02.2002, the complaint was filed only on 25.11 .2002 after a delay of nine months; that thereafter the notice under Section 13(2) of the Prevention of Food Adulteration Act,

1954 was served only on 26.11.2002; that the delay in launching prosecution under the said Act would be fatal, resulting in causing prejudice to the accused; that Section 13 (2) of the Act and Rules postulate that information of public analyst report should be informed within ten days; that the right under Section 13(2) of the Act is a valuable one, because the certificate of the Central Food Laboratory supercedes the report of the public analyst; that in a case, where there is a denial of the right on account of the deliberate conduct of the prosecution ie., delay in prosecution, as a result of which the sample became highly decomposed and could not be analysed and the vendor, in his trial, will be so seriously prejudiced; that in view of the ratio laid down by the Honourable Supreme Court in a case reported in 1967 Crl.L. J. 939 (Municipal Corporation of Delhi v. Ghisa Ram) and the other High Courts, the proceeding pending against the petitioners on the file of the Court of the Judicial Magistrate No.VI, Coimbatore is liable to be quashed and hence, the above criminal original petition.

4. During arguments, the learned counsel appearing on behalf of the petitioner would reiterate the facts and circumstances as brought forth in the above criminal original petition besides particularly in the context of making a petition of that sort under Section 13(2) of the Prevention of Food Adulteration Act, 1954, whereunder the notice has been served only on 26.11.2002 in spite of the complaint having been registered on 14.2.2002 i.e. after an inordinate delay of nine months. The learned counsel would further point out that the said Section and Rule 9-A of the Rules postulate that the information of the Public Analysis Report should be passed on within ten days and again within ten days from the institution of the proceedings, the complainant should send the copy of the report of the public analyst to the accused as contemplated under Section 13(ii) and 9(a) of the Act and Rules.

5. The learned counsel would also cite the judgment of the Honourable Apex Court delivered in Municipal Corporation of Delhi Vs. Ghisa Ram reported in AIR 1967 SC 970 and would point out that the vendor's right to have the sample analysed by the Director and denial of such right on account of deliberate conduct of the prosecution, the vendor becomes prejudiced against and the conviction based on such analysis is illegal. Citing the above judgment, the learned counsel for the petitioners would submit that in view of the ratio laid down by the Honourable Apex Court in the above manner, the proceedings pending against the petitioner on the file of the Court of Judicial Magistrate No.VI, Coimbatore become liable to be quashed.

6. The learned counsel would also cite two other judgments respectively reported in (2001) 2 CTC 546 (MOHAMED MEERAN AND ANOTHER vs. G. DEENADAYALU) and (2001) 4 CTC 274 (M.CHINNACHAMY AND 3 OTHERS vs. R. SATYANARAYANAN). In the first judgment cited above, in a case wherein the receipt of the analyst report was made after a lapse of 22 months, the learned Judge remarking that it caused prejudice to the accused, has quashed the proceeding.

7. In the latter judgment also, there was an inordinate delay in the receipt of the public Analyst report i.e. by eight months after the complaint was lodged and the intimation was sent to the petitioner therein

which has been discredited remarking that the delay in prosecution led to the sample becoming highly decomposed and could not be analysed and therefore the vendor in his trial would be so seriously prejudiced and ultimately would quash the proceedings. On such arguments, the learned counsel would seek to quash the proceedings in the case in hand also.

8. In reply, the learned Government Advocate on the criminal side appearing on behalf of the State, would cite the judgment of the Honourable Apex Court delivered in AJIT PRASAD RAMKISHAN SINGH vs. STATE OF MAHARASHTRA reported in (1972) 2 SCC 180 : AIR 1972 SC 1631 wherein a distinction was made by a three Judge Bench of the Honourable Apex Court from that of the judgment reported in AIR 1967 SC 970, cited on the part of the petitioner wherein regarding failure to get the sample analysed by the Director, Central Food Laboratory and the accused not making the application to the Court seeking the sample to the Director, Central Food Labotoratory, it was held that the accused cannot complain that he was deprived of his right to have the sample analysed by the Director on account of latches of complainant.

9. In the case in hand also, the accused has not made an application to the Court for sending the sample to the Director and therefore according to this judgment, the accused cannot claim any right or the benefit of the law on account of his failure to make the application in time. On such arguments, the learned Government advocate would pray to dismiss the above petition.

10. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and the learned Government Advocate contra, what could be analysed by this Court is that the delay that is caused in getting the report from the Chemical Analyst is highlighted on the part of the petitioner claiming that the delay would only lead to quashing of the proceedings as held by the judgments cited on behalf of the petitioners. However, not only as an answer to the High Court judgments cited above, but also in consideration of its earlier judgment, the Apex Court drawing a distinction between a delay wherein the accused, within the stipulated time by law, makes an application for referring the sample to the Central Food Laboratory and in case of failure to make such an application, the accused cannot claim the benefit of the delay that is caused in getting the sample analysed or receiving the report and thus superseding the earlier judgment cited on the part of the petitioner, which do not go into such vital aspects as the Honourable Apex Court has done in the judgment cited on the part of the prosecution.

11. Barring the above legality raised on the part of the petitioner, all other pleadings are of minor importance based on which no order to quash the proceedings could be made and they could be sorted out only conducting a trial with due opportunity for the petitioner to be heard and therefore this Court is of the view that the above criminal original petition does not merit acceptance and hence the following order:

In result, the above criminal original petition fails and the same is dismissed.

Consequently, Crl.M.P.No.6141 of 2003 is also dismissed.

Index: Yes
Internet: Yes

kvsg/Rao

To

1.The Food Inspector,
City Municipal Corporation,
Coimbatore.

2.The Judicial Magistrate No.VI,
Coimbatore

3.The Public Prosecutor,
High Court,
Madras.